

Filed for intro on 02/15/2001
SENATE BILL 819 By
Fowler

HOUSE BILL 1792
By Wood

AN ACT to amend Tennessee Code Annotated, Title 48; Title 67;
Title 68 and Title 71, relative to nonprofit providers of
health care services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 9, is amended by adding
Sections 2 through 7 of this act as a new part.

SECTION 2. Legislative intent.

(a) The general assembly finds and declares that:

(1) The primary mission of nonprofit hospitals is to deliver health care
without regard to the patient's ability to pay for such services; and

(2) A primary justification for granting tax-exempt status to nonprofit
hospitals is to advance and encourage their mission of delivering care to those
unable to pay for such services; and

(3) The rationale for conferring tax-exempt status on hospitals is the
"public good" expectation that benefiting hospitals will deliver health care within
the tax jurisdictions conferring the status without regard to the patient's ability to
pay; and

(4) Expenditure of funds by nonprofit tax-exempt hospitals to further corporate purposes, other than the direct delivery of health care within the taxing jurisdiction without regard to ability to pay for such services, is not consistent with government expectations, and is not in the public interest; and

(5) The state and its local governments face an unprecedented fiscal crisis that is largely attributable to the state's effort to provide health care to those who are unable to pay or are otherwise uninsurable; and

(6) The delivery of health care within the taxing jurisdiction to all without regard to ability to pay must be made the first and foremost priority of nonprofit tax exempt hospitals operating in the state; and

(7) To receive or retain exemption from state and local taxation, nonprofit hospitals must deliver uncompensated care within the taxing jurisdiction equaling or exceeding the value of the tax-exempt benefits given to those such hospitals plus any excess of revenues over expenses which are not expended to deliver health care within the jurisdictions granting tax exempt status.

(b) It is the Legislative intent that:

(1) The delivery of health care without regard to ability to pay is the primary justification for initially authorizing, or continuing to authorize, tax exemptions to nonprofit hospitals.

(2) To receive or retain tax-exempt status, a nonprofit hospital must annually provide uncompensated care in an amount equal to or greater than the amount of its tax-exempt benefits, including any excess of revenues over expenses which are not expended to deliver health care within Tennessee jurisdictions granting tax-exempt status. This act shall be construed liberally in accordance with the foregoing purpose.

(3) All appropriations by the state and its political subdivisions pursuant to this act for health care shall be expended to deliver health care within the state of Tennessee to the maximum extent feasible.

SECTION 3. For purposes of this act:

(1) "Bad debt" means the unreimbursed cost of a patient's obligation to a nonprofit hospital and its nonprofit supporting entities for delivering health care services within the state on an inpatient or outpatient basis.

(2) "Charity care" means the unreimbursed cost to a nonprofit hospital and its nonprofit supporting entities of:

(A) Providing, funding, or otherwise delivering health care services within the state on an inpatient or outpatient basis to a person classified by the hospital as financially indigent or medically indigent; or

(B) Providing, funding, or otherwise delivering health care services within the state to financially indigent persons through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(3) "Contributions" means the dollar value of governmental grants or donations of any kind, however designated, along with cash donations and the fair market value at the time of donation of in-kind donations to the nonprofit hospital or any of its nonprofit supporting entities from individuals, organizations, or other entities, except "contributions" does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(4) "Essential access hospitals" means, as determined annually by the commissioner of finance and administration and subject to the concurrence of the comptroller of the treasury:

(A) Hospitals with relatively low profitability and relatively high levels of government-sponsored indigent care, bad debt, and charity care;

(B) Hospitals that provide several regionally unique, essential clinical services with relatively high levels of bad debt and charity care; and

(C) Hospitals that provide a disproportionately large share of TennCare services.

(5) "Financially indigent" means an uninsured or underinsured person who is accepted for care with no obligation, or a discounted obligation, to pay for the services rendered based on the nonprofit hospital's eligibility system.

(6) "Government-sponsored indigent care" means the unreimbursed cost to a nonprofit hospital or its nonprofit supporting entities of delivering health care services to recipients of TennCare (or any subsequent Medicaid and/or Medicaid waiver program) and other federal, state, or local indigent health care programs, the eligibility for which is based on financial need or uninsurability.

(7) "Health care" means any services concerned with the maintenance or restoration of the health of the body or mind, including the furnishing to any individual of medical or dental care, or hospitalization, or services incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of alleviating, curing, or healing human illness, injury or physical disability.

(8) "Medically indigent" means a person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(9) "Nonprofit hospital" means a hospital that is:

(A) Eligible for tax-exempt bond financing or is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(B) Organized as a nonprofit corporation, not-for-profit corporation, or charitable trust under the laws of this state or any other state or country.

(10) "Nonprofit supporting entities" means nonprofit entities created or controlled by a nonprofit hospital or one or more of its parent or subsidiary entities to further the charitable purposes of the nonprofit hospital within the state and which are owned or controlled by the nonprofit hospital or its parent or subsidiary entities.

(11) "Tax-exempt benefits" means the dollar value of all the benefits conferred upon a nonprofit hospital and its nonprofit supporting entities by virtue of or resulting from its tax-exempt status as compared to a similarly situated for-profit hospital and its supporting entities. "Tax-exempt benefits" shall include all of the following, as determined annually for each reporting year, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) The dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities by virtue of its nonprofit status and previously granted tax-exempt status. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes; and

(B) The dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) The value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(12) "Taxing jurisdiction" means the state of Tennessee or any of its political subdivisions which has the power to tax or to grant exemption from taxes, and in which is located a nonprofit hospital.

(13) "Uncompensated care" means the bad debt, charity care, and government-sponsored indigent care of a nonprofit hospital and its nonprofit supporting entities as such categories are classified, subject to the following: for the nonprofit hospital's Joint Annual Report, to be considered uncompensated care, the health care services resulting in bad debt, charity care or government-sponsored indigent care must have been primarily delivered within the state of Tennessee; but nothing herein shall preclude a nonprofit hospital from including referral, transport and other health care services rendered in contiguous states in its uncompensated care, provided that such services are related to care delivered within this state.

(14) "Unreimbursed cost" means the costs a nonprofit hospital and its nonprofit supporting entities incur to deliver services less payments received from any source for such services including, but not limited to, the following: TennCare (or any subsequent Medicaid and/or Medicaid waiver program) payments or education reimbursements; state reimbursements for education; payments from drug companies to pursue research; and grant funds for research. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with the nonprofit hospital's Joint Annual Report.

SECTION 4. In order to qualify as a charitable organization for purposes of state and local taxation, a nonprofit hospital and its nonprofit supporting entities shall annually provide uncompensated care in an amount equal to or greater than the value of the tax-exempt benefits of such nonprofit hospital and its nonprofit supporting entities.

SECTION 5.

(a) If, during any calendar year, a nonprofit hospital and its nonprofit supporting entities fail to provide uncompensated care in an amount equal to or greater than the value of its tax-exempt benefits, such nonprofit hospital and its nonprofit supporting entities shall, on or before forty-five (45) days after the report filing deadline under

Section 6(b), made in lieu of tax payments to the state. The amount of such payments shall be equal to the difference between the tax-exempt benefits for such hospital and its nonprofit supporting entities and the total amount of uncompensated care that such nonprofit hospital and its nonprofit supporting entities provided during such year.

(b) The in lieu of tax payments to the state shall be allocated and distributed to essential access hospitals as a ratio of an individual essential access hospital's uncompensated care divided by the total amount of uncompensated care provided by all essential access hospitals in Tennessee. For purposes of this subsection, the term "uncompensated care" shall have the same meaning as under Section 3(13) of this act.

(c) Should the total amount of in lieu of tax payments paid to the state in any year exceed the total amount of uncompensated care provided by all essential access hospitals in Tennessee, the excess shall be retained by the state.

(d) In calculating the in lieu of tax payments to be made pursuant to subsection (a), a nonprofit hospital shall include an amount equal to all federal taxes that the nonprofit hospital and its nonprofit supporting entities would have been required to pay the United States Treasury, but for their nonprofit status.

(e) All payments made to state and essential access hospitals in accordance with this act shall be designated for the provision of charity and government-sponsored indigent care, and the commissioner of finance and administration and the comptroller of the treasury are authorized to take all reasonable steps to obtain federal matching funds for all or a portion of the payments received under this act.

SECTION 6.

(a) A nonprofit hospital shall prepare an annual report that documents:

(1) The amount of uncompensated care that it and its nonprofit supporting entities provided during the prior year;

(2) The amount of tax-exempt benefits of such nonprofit hospital, including the tax payments that such nonprofit hospital and its nonprofit supporting entities would have made to state and local taxing authorities, but for the exemptions granted under state and local law;

(3) The amount of excess revenues above expenses that are not expended to deliver health care within the taxing jurisdictions within which the hospital is situated; and

(4) Any other information which the comptroller of the treasury shall deem necessary to determine compliance with this act.

(b) A nonprofit hospital shall, no later than one hundred twenty (120) days after the close of its fiscal year, file its annual report with the department of revenue, the comptroller of the treasury, and with each local taxing authority in each taxing district where the nonprofit hospital conducts its business on such form or forms as shall be required by the state.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report is public information, and that it is available upon request from the nonprofit hospital. The statement shall be posted in prominent places throughout the nonprofit hospital, including, but not limited to, the general waiting area, the emergency room waiting area, the business office, and the admissions office; and such nonprofit hospital shall distribute such notice to all reasonably identifiable social welfare agencies and churches within the county limits where it maintains its principal hospital facilities.

(d) A nonprofit hospital shall provide, to each person who seeks health care at the nonprofit hospital, notice of the nonprofit hospital's charity care program and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, the emergency room waiting area, the business office, and the admissions office; and such nonprofit hospital shall distribute such notice to all reasonably

identifiable social welfare agencies and churches within the county limits where it maintains its principal hospital facilities.

(e) The department of revenue, the comptroller of the treasury and a local taxing authority may each assess a civil penalty against a nonprofit hospital that fails to make a report required under this section. The penalty may not exceed five hundred dollars (\$500) per day for each day that a report is delinquent after the date upon which it is due.

SECTION 7. The following institutions shall be exempt from the provisions of this act:

(1) Public hospitals or hospital authorities created by private act of the general assembly;

(2) Public hospitals created or operating pursuant to the provisions of the Metropolitan Hospital Authorities Act, the Private Act Metropolitan Hospital Authorities Act, or the Private Act Hospital Authorities Act of 1996, each of which is codified in Chapter 57 of Title 7, Tennessee Code Annotated;

(3) Any nonprofit hospital which is operating all or substantially all of the facilities of a hospital that was operating as a public hospital referenced in subsections (a) or (b) of this subsection immediately prior to the transfer of its assets to the nonprofit hospital; and

(4) Any nonprofit hospital that is operating as a part of a major teaching and research hospital of an accredited medical school that provides several regionally unique, essential clinical services.

SECTION 8. If any provision of this act or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect upon becoming law, the public welfare requiring

